

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 18.12.2013

+ W.P.(C) 6679/2013
RAJBARDHAN SINGH RAJPOOT Petitioner
Through: Mr Mohit Kumar Shah, Adv.
versus
THE UNION OF INDIA & ORS. Respondents
Through: Mr Neeraj Chaudhary, CGSC and Mr
Ravjyot Singh, Adv. for R-1 with Mr Prashob
Revi, Assistant, MEA

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

The petitioner before this Court applied to the concerned Regional Passport Office on 22.08.2006 for issue of a passport under the *Tatkal* Scheme. In the said application form, he gave his address as Village Gudhal, Post Barai, Tehsil Kolaras, District Shiv Puri, M.P. He also submitted a letter from SDM, Badarwas (Kolaras) who certified that the petitioner was residing at the aforesaid place. After issue of passport, the matter was referred to the concerned Police Station for verification of the address and antecedents of the petitioner. On 26.03.2007, it was reported by the Superintendent of Police, Shiv Puri, Madhya Pradesh that the petitioner was not found residing at the given address. However, no other address of the petitioner was reported by the police.

2. The case of the respondent is that a show-cause notice dated 16.04.2007 was issued to the petitioner requiring him to furnish his explanation for suppressing material information in his application. The case of the petitioner, however, is that no such notice was ever received by him. The relevant file has been brought to the Court, but the said show-cause notice is not available in the file. I asked the learned counsel for the respondent as to what was the mode of service of the said notice. However, no proof of service of any such notice is available in the file brought to the Court.

3. Vide order dated 31.12.2012, the passport issued to the petitioner was revoked and he was advised to surrender the said passport to the Passport Office, within 30 days of the receipt of the communication. The aforesaid communication dated 31.12.2012 was sent to the petitioner at the same address which he had given in the application form seeking passport and was duly received by him. The petitioner preferred an appeal against the order revoking his passport. The appeal came to be dismissed by the Joint Secretary and Chief Passport Officer vide order dated 05.09.2013 with the following orders:-

“3. Having gone through all the records and in the light of full facts and circumstances of the case, I decide as under:

i. Decision of the PI to impound the passport of the appellant is in order since by obtaining passport by

submitting false information, appellant is guilty of violation of Section 10(3)(b) of the Passport Act.

ii. It has been decided to place the appellant's name in the Prior Approval Category for a period of one year from the date of issuance of this order.

iii. Thereafter, the appellant may submit a fresh application for passport with the PO, with documentary proof of his address, which will be considered subject to usual checks, procedures and clear Police verification.

iv. The appeal is not allowed.”

Aggrieved from the dismissal of the appeal, the petitioner is before this Court by way of this writ petition.

4. Section 10(3) (b) of the Passport Act, 1967 provides that the Passport Authority may impound or cause to be impounded or revoked a passport, if it was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or any other person on his behalf.

5. In the celebrated case **Smt.Maneka Gandhi v. Union of India and Another** AIR 1978 Supreme Court 597, the passport of the petitioner was impounded in the public interest and the Govt. of India declined, ‘in the interests of the general public’ to furnish the reasons in its decision. The reasons, however, were disclosed in the counter affidavit filed in the Supreme Court. She filed a writ petition challenging the Constitution of validity of Section 10(3)(c) of the Passports Act to the extent it authorized

the passport authority impounding a passport in the interests of general public, on the ground that the said provision was violative of Article 14 of the Constitution, since it conferred vague and undefined power on the passport authority and did not provide for an hearing to the holder of the passport before the passport was impounded. It was also challenged on the ground of being violative of Article 21 of the Constitution since it did not prescribe the procedure within the meaning of that Article. It was also submitted by the petitioner before the Supreme Court that if it is held that a procedure has been prescribed in the aforesaid section, that is arbitrary and unreasonable. The Court observed that even if there are no positive words in the statute requiring that the party shall be heard, the principle of *audi alteram partem* mandates that no one shall be condemned unheard being is a part of the rules of natural justice and the said doctrine applies not only to quasi judicial functions but also to the administrative functions, the aim of both being to arrive at a just decision. The following view taken by the Court in the aforesaid judgment is pertinent:-

“62. Now, here, the power conferred on the Passport Authority is to impound a passport and the consequence of impounding a passport would be to impair the constitutional right of the holder of the passport to go abroad during the time that the passport is impounded. Moreover, a passport can be impounded by the Passport Authority only on certain specified grounds set out in Sub-section (3) of Section 10 and the Passport Authority would have to apply its mind to the facts and circumstances of a

given case and decide whether any of the specified grounds exists which would justify impounding of the passport. The Passport Authority is also required by Sub-section (5) of Section 10 to record in writing a brief statement of the reasons for making an order impounding a passport and, save in certain exceptional situations, the Passport Authority is obliged to furnish a copy of the statement of reasons to the holder of the passport. Where the Passport Authority which has impounded a passport is other than the Central Government, a right of appeal against the order impounding the passport is given by Section 11, and in the appeal, the validity of the reasons given by the Passport Authority for impounding the passport can be canvassed before the Appellate Authority. It is clear on a consideration of these circumstances that the test laid down in the decisions of this Court for distinguishing between a quasi-judicial power and an administrative power is satisfied and the power conferred on the Passport Authority to impound a passport is quasi-judicial power. The rules of natural justice would, in the circumstances, be applicable in the exercise of the power of impounding a passport even on the orthodox view which prevailed prior to A. K. Kraipak's case. The same result must follow in view of the decision in A. K. Kraipak's case, even if the power to impound a passport were regarded as administrative in character, because it seriously interferes with the constitutional right of the holder of the passport to go abroad and entails adverse civil consequences.”

It was contended by the learned Attorney General that *audi alteram partem* rule must be held to be excluded in such cases because if notice were to be given to the holder of a passport and reasonable opportunity afforded to him to show cause why his passport should not be impounded, he might immediately, on the strength of the passport, make good his exit from the country and the object of impounding the passport would be frustrated. Rejecting the contention, the Apex Court, *inter alia*, held as under:-

“63. It would not, therefore, be right to conclude that the audi alteram partem rule is excluded merely because the power to impound a passport might be frustrated, if prior notice and hearing were to be given to the person concerned before impounding his passport. The Passport Authority may proceed to impound the passport without giving any prior opportunity to the person concerned to be heard, but as soon as the order impounding the passport is made, and opportunity of hearing, remedial in aim, should be given to him so that he may present his case and controvert that of the Passport Authority and point out why his passport should not be impounded and the order impounding it recalled. This should not only be possible but also quite appropriate, because the reasons for impounding the passport are required to be supplied by the Passport Authority after the making of the order and the person affected would, therefore, be in a position to make a representation setting forth his case and plead for setting aside the action impounding his passport. A fair opportunity of being heard following immediately upon the order impounding the passport would satisfy the mandate of natural justice and a provision requiring giving of such opportunity to the person concerned can and should be read by implication in the Passports Act, 1967. If such a provision were held to be incorporated in the Passports-Act, 1967 by necessary implication, as we hold it must be, the procedure prescribed by the Act for impounding a passport would be right, fair and just and it would not suffer from the vice of arbitrariness or unreasonableness. We must, therefore, hold that the procedure 'established' by the Passports Act, 1967 for impounding a passport is in conformity with the requirement of Article 21 and does not fall foul of that article.”

6. Since the order revoking the passport visits the passport holder with serious civil consequences since he is unable to travel abroad, it is necessary for the Passport Authority, seeking to cancel his passport in terms of the powers conferred upon him under Section 10(3)(b) of the Act,

to give a show-cause notice followed by an opportunity of hearing to him, before revoking the passport. Though the respondent claimed to have issued such a notice to the petitioner, the office copy of the said notice is not available in the relevant file brought to the Court nor there is any proof of dispatch of such a notice. The conclusion, therefore, is that the passport of the petitioner came to be revoked, without giving any show-cause notice and/or opportunity of hearing to him. For this reason alone, the impugned order is liable to be set aside.

7. Coming to the merits of the case, the petitioner has placed on record a copy of his family card which shows him to be a resident of Village Gudhal, Post Barai, Tehsil Kolaras, District Shiv Puri, M.P. This is not the case of the respondents that the aforesaid document is a forged document. More importantly, on receipt of police report, no attempt was made by the Regional Passport Office to contact the SDM who had issued the certificate to the petitioner, to ascertain the genuineness of the said certificate. In case the certificate was found to be forged, the respondent would have been justified in revoking the passport on the ground that the petitioner had obtained the same on the basis of forged documents. In case the certificate was found to be genuine, the respondent ought to have enquired from the SDM as to on what basis, he had certified the petitioner to be a resident of Village Gudhal, Post Barai, Tehsil Kolaras, District Shiv

Puri, M.P. No such course of action, however, was adopted by the respondents. Considering that the petitioner had obtained passport on 29.08.2006 and the police verification has carried out sometime in March, 2007, the possibility of the petitioner either being abroad or not being available at the given address at the time a police official went to his place for verification cannot be altogether ruled out.

8. For the reasons stated hereinabove, the impugned order dated 05.09.2013 is set aside. The passport of the petitioner be released to him forthwith.

V.K. JAIN, J

DECEMBER 18, 2013
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